# STATE OF MICHIGAN

# COURT OF APPEALS

GRACE VAUGHAN, KAREN MURPHY, DONNA J. WESTON, EDWARD R. WESTON, PATRICIA S. WILSON and ROSEMARY COOK,

Plaintiffs-Appellants,

and

BARNEY MCCOURT, MARGARET MCCOURT-BEDES, PATRICIA E. OMALLEY and ROBERT H. REEVE,

Plaintiffs/Counter-defendants, Cross-defendants/Appellants,

v

RITA THOMAS and RITA THOMAS REVOCABLE TRUST,

Defendants/Counter-plaintiffs, Cross-plaintiffs/Appellees,

and

KATHLEEN WILBUR, Director, DEPARTMENT OF CONSUMER & INDUSTRY SERVICES, K.L. COOL, Director, DEPARTMENT OF NATURAL RESOURCES, IOSCO COUNTY ROAD COMMISSION and TOWNSHIP OF OSCODA,

Defendants/Counter-defendants, Cross-defendants/Appellees,

and

TOWNSHIP OF AU SABLE, IOSCO COUNTY DRAIN COMMISSION, DIRECTOR STATE TRANSPORTATION, JERRY N. THOMAS, KATHLEEN THOMAS, JOAN M. RYAN, DEANNA RUCKMAN, BOBBIE N. RUCKMAN ET UX, LAUREL J. ISHAM, JOHN LANE, JENNY E. LANE, WILLIAM S. LOTT, JILL A.

UNPUBLISHED
July 8, 2004

No. 243265
Iosco Circuit Court
LC No. 00-002849-CH

ON RECONSIDERATION

LOTT, GEORGE EGERVARI, KELLIE SWYNTAK, GALLANT SWYNTAK, KIMBERLY SWYNTAK, ROSEMARY RYAN WELCH, KAREN MURPHY, DAVID M. WYGANT, MOLLY T. WYGANT, VIRGINIA J. MALLORY, JOHN SMITH ET UX, PETER B. MAPES, NONA I. MAPES, DOROTHY M. THOMAS et al.,

Counter-defendants/Cross-defendants/Third-Party Defendants.

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Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiffs appeal a judgment of no cause of action in this case involving rights of access to a strip of land in Oscoda Township extending from the traveled portion of Park Street to the water's edge of Lake Huron. The original plat dedicated to the public use the subdivision's east-west streets, including Park Street, to the water's edge. The court concluded at the bench trial, however, that plaintiffs had not established formal or informal acceptance of the streets, and dismissed plaintiffs' declaratory judgment action at the close of plaintiffs' proofs. The trial court's judgment granted defendants Thomas counter-complaint for adverse possession of the disputed strip. We conclude that the trial court clearly erred in concluding that the street was not formally or informally accepted and in concluding that adverse possession was established. We vacate the judgment of no cause of action and the grant of title on the basis of adverse possession to defendants Thomas of the disputed strip. We reverse and remand for a new trial.

I

Plaintiffs and Defendants Thomas are owners of land in a subdivision in Oscoda Township, Iosco County. On October 26, 1868, the original plat of the area was recorded with the Iosco County Register of Deeds. Entitled "Map of the Village of Oscoda," the original plat dedicated the streets for public use, stating, "Said streets or such of them as run easterly and westerly extend no farther than to the present water's edge at the lake." Park Street runs east-west, between US 23 on the west, and Lake Huron on the east, and is 66' wide.

At issue is the southerly half (33') of the strip that extends from the traveled portion of Park Street to the present water's edge of Lake Huron. The Thomas family has owned property to the south of the disputed strip since 1948, on which there is a resort and cottages on Lake Huron. Defendant Oscoda Township owns the property north of the disputed strip, on which there is a public park (Oscoda Township Park) on 1,122' of Lake Huron frontage, with boardwalks and access to Lake Huron. Apparently, the land on which the Township park was built was formerly a public campground and/or trailer park, dating back to around the 1940s.

A – 1998 Quiet Title Action

Thomas obtained a default judgment in 1988 quieting title in the disputed strip (the southerly 33' of Park Street) as against persons claiming through the last owner of record, William H. Gratwick. *Rita Thomas v The Unknown Heirs, Assigns, Devisees and Legatees of William H. Gratwick; and any other Unknown Persons Claiming Through Such Heirs, Assigns, Devisees or Legatees,* Iosco Circuit Court File Number 98-1373-CH. Thomas then obtained permits to build a two-story house on the 33' strip, construction of which was completed around October 1999.[1]

B – The Instant Declaratory Action

Plaintiffs later sought a declaration that Park Street extended to the water's edge of Lake Huron, that Park Street bordered a body of water under MCL 247.41 and that proper procedures were not followed preventing the abandonment, discontinuance or alteration of a public highway that borders on or is adjacent to any lake, MCL 247.41 *et seq*. Plaintiffs also sought a declaration that the judgment quieting title in Thomas was null and void, because the proper parties had not been joined as required by law, and the court thus had no jurisdiction to enter a judgment of quiet title.[2] Plaintiffs additionally asserted rights as back-lot owners.

Defendants Thomas, and defendants Oscoda Township and Iosco County Road Commission (the municipal defendants), moved for summary disposition. The municipal defendants disclaimed any interest in the disputed strip. Plaintiffs filed cross-motions for summary disposition.

Defendants Thomas and Road Commission were granted summary disposition at the close of plaintiffs' proofs.[3]

II

Plaintiffs maintain that their proofs at trial established formal acceptance, in 1940, by the Iosco County Road Commission of Park Street to the water's edge. This Court reviews a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo. *Ambs v Kalamazoo Co Rd Comm,* 255 Mich App 637, 651; 662 NW2d 424 (2003). A finding is clearly erroneous where, although there is evidence to support it, the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been made. *Id.* at 652.

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[1] The record contains 1993-1999 property tax bills Thomas paid that clearly state she was taxed for the disputed 33' southerly strip of Park Street.

[2] Plaintiffs also sought "further necessary and proper relief."

[3] Defendants Thomas filed a counter/cross/third party complaint alleging acquiescence, adverse possession, and seeking in the alternative to amend/vacate the portion of the plat that the disputed strip of property was on should the court find that the disputed strip was part of the plat. The trial court dismissed this count. Oscoda Township was dismissed from the suit. Defendants Thomas filed an application, and a delayed application, for leave to appeal the trial court's denial of their motion for summary disposition, which this Court denied for failure to persuade of the need for immediate appellate review.

This Court reviews de novo a grant of summary disposition. *Ditmore v Michalik*, 244 Mich App 569, 573-574, 578-579; 625 NW2d 462 (2001).

We note preliminarily that plaintiffs' proofs at trial showed that Park Street as platted was riparian, and no proofs to the contrary were presented.[4] "'Riparian land'" is defined as a parcel of land that includes therein a part of or is bounded by a natural water course." *Thompson v Enz*, 379 Mich 667, 677; 154 NW2d 473 (1967), citing 4 Restatement Torts, § 843, p 326. Riparian property conveys the right of passage to the water, and the adjacent owners hold any interest in the road subject to that right. *Backus v Detroit*, 49 Mich 110, 116-117; 13 NW 380 (1882) (rejecting Iowa law, which limited riparian ownership to the water's edge). The riparian right persists through accretion and reliction; "accretions in front of land dedicated to public use go to increase the land thus dedicated." *Id.* at 118. Additionally, that a plat describes a street by its course, length, width, etc., including, for example, the description "to extend no farther than to the present water's edge," is required by law; it is not an indication that the dedication was limited to those dimensions. In *Backus*, *supra* at 118-120, the Supreme Court explained:

> In this last case [*Hoboken L & I Co v Hoboken*, 36 NJ 540] it is held that if the State authorizes private individuals to fill in and appropriate the water-front, a street running to the water is extended as the filling goes on.
>
> That accretions in front of land dedicated to public use go to increase the land thus dedicated is decided in *New Orleans v. United States*, 10 Pet. 662; *Godfrey v. Alton*, 12 Ill. 29; *Cook v. Burlington*, 30 Iowa 94; as well as in the New Jersey cases referred to. . . . In [*McMurray v. Mayor etc. of Baltimore*, 54 Md. 103,] the following language is used: "In our judgment the dedication of Cross street to the public use as a street extending to the water, carried with it by necessary implication, the right of the city to extend it into the harbor by the construction of a wharf at the end thereof." . . . .
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> But an argument on the statute is made for complainant which requires some attention. The statute for making and recording town plats requires that the plat

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4 Maynard Dyer, a licensed land surveyor and Assistant Chief of the Subdivision Control Section of the Michigan Department of Consumer and Industry Services, testified that he had held that position for seventeen years and was also in charge of the Remonumentation and Plat Survey Review Section. Dyer testified that his duties included examining plats for requirements of the Land Division Act, including presentation and survey requirements. Dyer brought with him a plat entitled "Map of the Village of Oscoda" that was on file with the State of Michigan, dated 1911, and certified copies. He testified that this plat and the 1868 plat in the County Register of Deeds Office had "some minor differences," i.e., the plat on file at the County Register of Deeds had some markings not found on the State of Michigan's copy of the same plat. When asked what determination he had made regarding whether Park Street was a street extending to the water's edge in those plats, Dyer opined that both plats showed Park Street as going to the water's edge. Dyer also opined that the east-west roads (of which Park Street is one) are riparian "because the proprietor's certificate said that they run to the water's edge even though thre [sic] was a qualifier as of that date."

shall particularly set forth and describe all streets, etc., by their courses, lengths, widths, etc. Comp. L. § 1345. The plat in this case gave the width of the street which was laid down upon it, and also, by giving the dimensions of the lots, gave the length also. The argument is that the plat dedicated to public use so much in width and so much in length, and no more, limiting the donation within the exact lines which would give that length and breadth. If this is the case, the proprietor might immediately on recording the plat have proceeded to take possession of the land at the end of the street; might have erected across it a barrier to prevent the public having access to the navigable water; might have sold it for the purposes of a ware-house, or made any other use which a private owner may lawfully make of his own possessions. It cannot be questioned that if she had asserted, exercised and been sustained in any such a right, it would have been a surprise to people purchasing lots embraced in the plat. They must have supposed that in dedicating a way to the river she was giving to the public access to the river, and not merely to a wall on its bank or some other obstruction put up to preclude access. It must have been understood by them, as it was by an eminent court under the circumstances of a similar dedication, that "the purpose was to provide means of access for the public to navigable waters," and that "such was the scope and purpose of the dedication." *Hoboken L. & I. Co. v. Hoboken* 36 N. J. 540-546. If Loranger had sold off every lot on her plat would it have entered into the head of any of her grantees that she still had upon the plat something which was salable? We think not. Whatever on the plat was not marked off as lots was dedicated to the public; and as the grant to an individual, when bounded by the water, extended to the middle line of the river, so the gift to the public had a similar extension. The dedication to the shore line no more had the effect to restrict the public use to that line than would a grant that was similarly bounded. The gift in the one case and grant in the other is to the river, and leaves in the donor or grantor nothing beyond.

A - DEDICATION AND ACCEPTANCE

[T]he well-established rule is that a valid dedication of land for a public purpose requires two elements: a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and acceptance by the proper public authority. *Lee v Lake,* 14 Mich 11, 18 (1865). Public acceptance must be timely, *Wayne Co v Miller,* 31 Mich 447, 448-449 (1875), and must be disclosed through a manifest act by the public authority "either formally confirming or accepting the dedication, and ordering the opening of such street, or by exercising authority over it, in some of the ordinary ways of improvement or regulation." *Tillman v People,* 12 Mich 401, 405 (1864). In *Miller,* this Court explained that the requirement of public acceptance by a manifest act, whether formally or informally, was necessary to prevent the public from becoming responsible for land that it did not want or need, and to prevent land from becoming waste property, owned or developed by no one. *Id.* at 448.

. . . . the disposition of each case will be resolved by determining whether the respective public authority manifested a timely acceptance before the property

> owner withdrew the offer to dedicate or before the offer lapsed on its own: a race, if you will, to see who first acted to claim the platted road. The burden of proving acceptance of the offer is on the public authority; the burden of proving withdrawal of the offer is on the property owner. *Vivian v Roscommon Co Bd of Rd Comm'rs*, 433 Mich 511, 515-517, n 10; 446 NW2d 161 (1989). [*Kraus v Dep't of Commerce*, 451 Mich 420, 427; 547 NW2d 870 (1996).]

Acceptance of dedicated parcels may be 1) formal by resolution or ordinance; 2) informal through the expenditure of public money for repair, improvement and control of the highway; or 3) informal through public use. *Kraus v Gerrish* Twp, 205 Mich App 25, 40; 517 NW2d 756 (1994), aff'd in part and remanded in part, *Kraus v Dept't of Commerce*, 451 Mich 420; 547 NW2d 870 (1996).

B - Plaintiffs' Proofs Regarding Formal Acceptance

To support that there had been formal acceptance of the plat in 1940, plaintiffs called Frederick Timlick, manager of the Iosco County Road Commission for the last 4 years. Timlick brought a copy of a notarized certification letter on file with the Commission, dated February 14, 1940, from J.N. Sloan, the Engineer and Superintendent of the Iosco County Road Commission, to Dewey Thornton, the then-Highway Commissioner for Oscoda Township, stating:

> Dear Sir:
>
> At a regular meeting of the Board of Iosco County Road Commissioners held on the 10th day of February 1940, by a majority of yea and nay vote of said commission, it was determined to take over and constitute as county roads under provisions of Chapter 4 of Act 283 of Public Acts of 1909, and Act 130 of Public Acts of 1931 [the McNitt act], as amended by Act 36 of Public Acts of 1939 the following roads, streets and alleys:
>
> * * *
>
> All streets and alleys in the following recorded plats in accordance with the provisions of Act 36 of Public Acts of 1939.
>
> Map of Oscoda, The Oscoda Boom Co's Division of Block 19 of the Village of Oscoda, Gratwicks, Smith & Fryer's Addition of Oscoda, Gratwick, Smith Fryer's 2nd Addition to Oscoda . . . .

The trial court concluded that the 1940 letter was not sufficient to constitute an acceptance by the Road Commission of the streets within Oscoda because the letter lacked an exact reference to the original recorded plat (which was entitled "Map of the Village of Oscoda," rather than "Map of Oscoda"), and that the Road Commission itself had to accept the street for it to constitute a formal acceptance, or there had to be evidence of a prior acceptance by the Township, which had had jurisdiction over the roads up to the time of the McNitt Act (discussed below), and that the record was silent as to those points.

C

The McNitt act, 1931 PA 130, MCL 247.1 – 247.3, repealed by 1951 PA 51, "required each board of county road commissioners to take over all township highways and incorporate them into one county-wide highway system over a five-year period." *Kraus, supra* at 427.[5] The McNitt act was amended by 1939 PA 36, such that certification of roads required that the roads be in use for public travel for at least three months of each year, and the roads to be certified must have been taken over by the Board of County Road Commissioners between September 17, 1931 and July 1, 1939.

The municipal defendants maintained from the inception of these proceedings that although they had certified and maintained 825' of Park Street, extending from US 23 eastward, they had no interest in the disputed strip (the south 33 feet of all of the Lake Huron Shore East of Park Street), and at no time had formally accepted it, used or maintained it.

Defendants are correct that the 1940 letter plaintiffs submitted to support that there had been formal acceptance, was not a formal resolution, as required by the McNitt act. It is also true that plaintiffs submitted no further documentation, when presumably additional documentation could have shed light on the question whether the 1940 letter's reference to "Map of Oscoda" was indeed a reference to the original recorded plat (entitled "Map of the Village of Oscoda"). However, William Woods, a land surveyor in Oscoda for many years, testified that the "Map of the Village of Oscoda" was the only map of Oscoda recorded in the Iosco County Register of Deeds office and, thus, that the 1940 letter did indeed refer to the original plat. Given that plaintiffs presented testimony that there was only one recorded map of Oscoda, the reference to "Map of Oscoda" in the 1940 letter should not be fatal to plaintiffs' claim.

Plaintiffs maintain that formal acceptance is also evidenced by a map entitled "County Road Certification for the year of 1940". This 1940 certification map, also relied on by

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[5] Section 2 of the McNitt act, MCL 247.2, provided:

> On or before April first, nineteen hundred thirty-two, the board of county road commissioners in each of the several counties of the state shall take over and incorporate into the county road system, twenty per cent of the total township highway mileage so determined and fixed by the state highway commissioner in each township of their respective counties. Thereafter each such board of county road commissioners shall, on April first of each succeeding year, take over and incorporate into their county road system, an additional twenty per cent of such township highway mileage until the entire township highway mileage in all of the townships of each of such counties has been taken over and made a part of the county highway systems. In the year next following the taking over of all such highways all dedicated streets and alleys in recorded plats and outside of incorporated cities and villages shall be taken over and become county roads.

defendants, stated the distance (in feet) of each street to be certified under the 1939 amendment of the McNitt act. The 1940 certification map stated that 825' of Park Street, beginning at US 23 and going east, were to be certified. On this map, the 825' stretch of Park Street that was certified ends at a street called Bay Shore Road, which on the 1940 map is directly adjacent to Lake Huron. This road was not on the original plat and appears to have been the result of accretion. Resident testimony indicates that this road may have later been washed out. Thus, it appears that Park Street was clearly accepted under the McNitt Act, notwithstanding the failure to produce the resolution, or the reference to the "Map of Oscoda," and the trial court's finding to the contrary was clearly erroneous.

We note that the question remains whether the formal acceptance included the disputed strip. The trial court never got this far. The map of the Village of Oscoda presumably referred to in the McNitt letter shows Park Street extending to the water's edge, and the certification map shows the intersection of Park and Bay Shore as being at the water's edge. While there was testimony that defendant Thomas' house and the disputed strip lay beyond 825', it was not established when this strip accreted. Thus, the more difficult issue, not reached by the trial court, is whether the McNitt acceptance was to the water's edge in 1940. If it was, the accretions would be included by operation of law. If the acceptance was not to the water's edge at the time, then presumably the subsequent accretions were not formally accepted.

In any event, the trial court's finding that Park Street was not formally accepted in 1940 was clearly erroneous.[6]

III- Plaintiffs' Proofs Regarding Informal Acceptance

Plaintiffs maintain that that their proofs at trial established there was informal acceptance, by virtue of the municipal defendants having maintained Park Street to the water's edge of Lake Huron for decades, and the public having used Park Street to the water's edge for decades. We agree.

Informal acceptance of dedicated parcels may be informal through the expenditure of public money for repair, improvement and control of the highway; or informal through public use. *Kraus v Gerrish Twp, supra* at 40.

Plaintiffs' witnesses testified that Park Street had been maintained to the water's edge by municipal authorities for decades, including snow-plowing and grading, going back to the 1930s. Plaintiffs' witnesses testified that "everyone" had used Park Street for access to Lake Huron since the 1930s for pedestrian and boating access, and for vehicular traffic. The witnesses testified that they continued to use Park Street to reach the lake until Thomas built the house on the disputed strip in 1999.

The trial court stated regarding informal acceptance:

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[6] The trial record is silent as to any *formal* acceptance of the disputed strip *before* 1940, thus the court did not clearly err by so finding.

> In this case, the testimony of the three witnesses on behalf of Plaintiffs, and that is Ms. Ryan, Ms. Welch, and Ms. Ruckman, demonstrate a pedestrian use walking to the lake back and forth seasonally. Their testimony as to the extent of their use is not sufficient to give notice of a claim by adverse user, open and obvious against the owner of the land in question. . . .

The trial court's decision regarding informal acceptance appears to be focused on the question whether plaintiffs established adverse rights by user.[7] This was also error. The question was not whether plaintiffs had established their rights by adverse user, but, rather, whether plaintiffs had shown informal acceptance of the platted road through public maintenance and expenditure and by public use.

We conclude that plaintiffs' evidence established informal acceptance, by virtue of public maintenance to the water's edge, and use by the public, going back to the 1930s.

IV

Plaintiffs challenge the trial court's conclusion that they lacked standing to assert informal acceptance where the county and township disclaimed any interest in the strip, and that the use was insufficient to establish an adverse claim. Whether a party has standing is a question of law we review de novo. *Lee v Macomb County Bd of Commr's,* 464 Mich 726, 734-736; 629 NW2d 900 (2001); *Higgins Lake Property Owners Assoc v Gerrish Twp,* 255 Mich App 83, 89; 662 NW2d 387 (2003).

A

We first observe that plaintiffs did not seek to establish a highway by user under MCL 221.20, but only sought to establish that a platted and existing road had, in fact, been *accepted* both by the public authority's actions in maintaining the road, and by public use. As stated above, the trial court's decision regarding use appears to be focused on the question whether plaintiffs established adverse rights by user. This was error.

Further, we conclude that in the context of this action, as the trial court impliedly recognized regarding plaintiffs' claim generally, plaintiffs had standing to assert public rights of access to Lake Huron via Park Street given the circumstances presented. As longtime residents of the Village of Oscoda who, for decades, had access to Lake Huron via Park Street, plaintiffs' interest in the outcome of the litigation "ensured sincere and vigorous advocacy." *House Speaker v Governor,* 443 Mich 560, 572; 506 NW2d 190 (1993); *Nelson v Roscommon Co Rd Comm'n,* 117 Mich App 125, 132-133; 323 NW2d 621 (1982) (plaintiffs, back-lot owners in

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[7] The requirements for a public highway by user were set out in *Missaukee Lakes Land Co v Missaukee County Rd Comm'n,* 333 Mich 372, 379; 53 NW2d 297 (1952): "To constitute a highway by user, there must be a defined line, and it must be used and worked upon by the public authorities, and traveled over and used by the public, for 10 consecutive years, without interruption, and the possession thereof by the public must be open, notorious, and exclusive."

subdivision, had standing to assert rights in suit to vacate portion of platted street). Plaintiffs showed that they had a substantial interest that would be detrimentally affected in a manner distinct from the citizenry at large. *Id.*

B

Plaintiffs also asserted *private* rights of access to the water via Park Street as owners of land in the subdivision, but the trial court failed to adjudicate those rights. This was error.

In *Nelson, supra* at 132-133, the trial court ruled in the plaintiffs' favor, vacating a portion of Church Street and ordering that the land comprising that portion of the street revert to the plaintiffs. The defendant road commission appealed, arguing that the plaintiff individual lot owners did not have standing to petition the circuit court to vacate a platted street, and that the plaintiffs were required to join both the other subdivision lot owners and the Township as party defendants. This Court concluded that the plaintiffs had standing as lot owners in the subdivision. However, and pertinent here, the Court observed:

> Plaintiff's contention that the other subdivision lot owners have no interest in the vacated street is incorrect. It is well-established that a purchaser of property in a recorded plat receives not only the interest as described in the deed but also whatever rights are indicated in the plat. *Kirchen v Remenga,* 291 Mich 94, 102-109; 288 NW 344 (1939), *Fry v Kaiser,* 60 Mich App 574, 577; 232 NW2d 673 (1975). A grantee of property in a platted subdivision acquires a private right entitling him '"to the use of the streets and ways laid down on the plat,' regardless of whether there was a sufficient dedication and acceptance to create public rights", *Rindone v Corey Community Church,* 335 Mich 311, 317; 55 NW2d 844 (1952). Therefore, whether or not the street was properly dedicated or accepted by Gerrish Township is irrelevant as to the interests of the property owners within the subdivision. The private rights of those property owners to use the dedicated street cannot be extinguished by the township's failing to accept the street for public use.
>
> However, the fact that the back-lot property owners have an inherent right to use the streets and public areas laid down in the plat does not mean that plaintiff was required to join them as party defendants. Their rights have not been affected by the trial court's decision to vacate a portion of the platted street. Although title to a street which is vacated by court judgment vests in the abutting property owners, MCL 560.227a . . . , the back-lot property owners' right to use the platted street, a right in the nature of an easement, may remain unimpaired. [*Nelson, supra* at 132-133.]

In *Little v Hirschman,* 469 Mich 553, 564; 677 NW2d 319 (2004), issued during the pendency of this appeal, and the subject of several supplemental authority briefs, the Supreme Court held that "dedications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land."

The trial court erred by failing to consider plaintiffs' rights as owners under the plat.

C

Plaintiffs also contend that there was acceptance of the streets as a matter of law pursuant to MCL 560.255b.[8] We disagree. The proper application of MCL 560.255b to the instant case must be determined on remand based upon the proofs. *Vivian v Roscommon County Bd of Rd Commr's*, 433 Mich 511, 520-523; 446 NW2d 161 (1989).

V

Plaintiffs argue that defendant Thomas could not acquire title to the disputed strip by adverse possession under MCL 247.190 and MCL 600.5821(2), and that adverse possession was not established in any event. To establish a claim of adverse possession, a person must show by clear and cogent proof possession that is actual, visible, open, notorious, exclusive, hostile and under claim of right, and continuous and uninterrupted for the statutory period of fifteen years. *Kettunen v Torreano*, 59 Mich App 652; 230 NW2d 14 (1975). Whether adverse possession has been established generally depends on the facts of each case. *Whitehall Leather Co v Capek*, 4 Mich App 52; 143 NW2d 779 (1966).

Under MCL 247.190,[9] a public highway cannot be adversely possessed. If the highway was accepted, MCL 247.190 precludes an adverse possession claim. This is also the case under MCL 600.5821(2).

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[8] MCL 560.255b provides:

> (1) Ten years after the date the plat is first recorded, land dedicated to the use of the public in or upon the plat shall be presumed to have been accepted on behalf of the public by the municipality within whose boundaries the land lies.
>
> (2) The presumption prescribed in subsection (1) shall be conclusive of an acceptance of dedication unless rebutted by competent evidence before the circuit court in which the land is located, establishing either of the following:
>
> (a) That the dedication, before the effective date of this act and before acceptance, was withdrawn by the plat proprietor.
>
> (b) That notice of the withdrawal of the dedication is recorded by the proprietor with the office of the register of deeds for the county in which the land is located and a copy of the notice was forwarded to the state treasurer, within 10 years after the date the plat of the land was first recorded and before acceptance of the dedicated lands.

[9] MCL 247.190, 1925 PA 368, provides:

(continued…)

Moreover, there was not clear and cogent evidence of adverse possession. Ryan, Welch and Ruckmann testified that they and many others used Park Street for access to Lake Huron from the 1930s until the Thomases built the house in 1999. The trial court's finding that the Thomases had excluded all traffic from their property since before 1970 was unsupported. Also not well supported was the trial court's finding that Ryan testified that access to the lake along Park Street was blocked by the Thomases in the 1950s or 1960s or 1970s. Ryan testified that she used Park Street for access to Lake Huron until 1999, when the Thomases built a house, although she later testified that they had closed off a portion of the property around the 1960s, but from all indications, Ryan was talking about a street other than Park Street. On the record made so far, the trial court's determination that plaintiffs' witnesses' testimony established adverse possession was clearly erroneous.

VI

Plaintiffs and the State defendants also argue that the trial court lacked jurisdiction to vacate and award title to a platted street, except according to the Land Division Act, MCL 560.221,[10] or under MCL 247.43.[11] We note that the quiet title action Thomas brought in 1998

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(…continued)

> All public highways for which the right of way has at anytime been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and not encroachments which may hereafter be made, shall give the party or parties . . . so encroaching, any title or right to the land so encroached upon.

[10] MCL 560.221 provides "The circuit court may, as provided in sections 222 to 229 vacate, correct, or revise all or a part of a recorded plat."

Section 222 provides:

> To vacate, correct, or revise a recorded plat or any part of it, a complaint shall be filed in the circuit court by the owner of a lot in the subdivision, a person of record claiming under the owner or the governing body of the municipality in which the subdivision covered by the plat is located. [MCL 560.222.]

Section 224a requires that the plaintiff in such an action join as parties defendant:

> (a) The owners of record title of each lot or parcel of land included in or located within 300 feet of the lands described in the petition and persons of record claiming under those owners.
>
> (b) The municipality in which the subdivision covered by the plat is located.
>
> (c) The state treasurer.

(continued…)

was not, obviously, an action brought to modify or vacate a road. Plaintiffs argue that the judgment quieting title in effect modified Park Street, and that the court in the quiet title action was not informed that it was in effect vacating a street that terminated at the water's edge of Lake Huron.

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(…continued)

> (d) The drain commissioner and the chairperson of the board of county road commissioners having jurisdiction over any of the land included in the plat.
>
> (e) Each public utility which is known to the plaintiff to have installations or equipment in the subdivision or which has a recorded easement or franchise right which would be affected by the proceedings.
>
> (f) The director of the state transportation department and the director of the department of natural resources if any of the subdivision includes or borders a state highway or federal aid road.
>
> (g) If the requested action may result in a public highway or a portion of a public highway that borders upon, crosses, is adjacent to, or ends at a lake or the general course of a stream being vacated or altered in such a manner as would result in the loss of public access, the director of the department of natural resources and, if the subdivision is located in a township, the township. . . . [MCL 560.224a.]

[11] MCL 247.41, which is pertinent to MCL 247.43, provides:

> A public highway or a portion of a public highway that borders upon, crosses, is adjacent to, or ends at a lake, or the general course of a stream, shall not be abandoned, discontinued, vacated or have its course altered resulting in a loss of public access by the order or action of an official or officials of a city or village in this state, until an order authorizing the abandonment, discontinuation, alteration, or vacation is made by the circuit court for the county in which the highway is situated in a manner provided in this act.

MCL 247.42 provides:

> If the official or officials having jurisdiction over the highways of a village or city in this state desire to abandon, discontinue, vacate, or alter the course of a public highway referred to in section 12, and the abandonment, discontinuation, vacation, or alteration will result in the loss of public access, before any action is taken by the public official . . . an application signed by not less than 21 landowners of the village or city in which the highway is situated, shall be made to the circuit court for the county in which the highway is located. . . .

MCL 247.43 provides that upon the filing of an application under section 2, [MCL 247.42] the circuit court judge shall schedule a hearing within sixty days, and notice of the hearing shall be published, among other things.

Under MCR 3.411(H)[12], a quiet title judgment binds only those made parties to the action. We conclude that the judgment quieting title in Thomas as to the Gratwick defendants is not null and void; it simply is not binding on non-parties. MCR 3.411(H).

We concluded above that adverse possession was not established at trial, and that the court's findings regarding the lack of acceptance were clearly erroneous on this record. Thus, the question whether various statutes barring modification or vacation of a plat or public highway ending on a lake were violated is moot.

However, because the issues of acceptance, the character of the disputed land as a public road, and the applicability of the various statutes[13] are intertwined, on remand the court shall consider these statutes and also permit defendants to reassert their counter-claims, see n 3, *supra,* including a claim under the Land Division Act, MCL 560.221, see n 10, *supra*.

VII

Plaintiffs contend that the trial court improperly dismissed defendant Oscoda Township because it was a necessary party in this declaratory judgment action, by virtue of the disputed property being located in Oscoda Township, the township having issued defendant Thomas a building permit to build on the disputed strip, and the township thus having affected plaintiffs' right of access to, and view of, Lake Huron.

"It is essential in an action for declaratory judgment that all parties having an apparent or possible interest in the subject matter be joined so that they may be guided and bound by the judgment." *Allstate Ins Co v Keillor,* 190 Mich App 499, 503; 476 NW2d 461 (1991), rev'd on other grounds 442 Mich 56; 499 NW2d 743 (1993).

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[12] Longhofer & McKenna, *Michigan Court Rules Practice*, § 3411.7, p 563, states:

> At common law, the action of ejectment only determined the party's right to possession at the time the action was commenced. It did not determine the party's right to possession at any future time, nor did it determine title. MCLA 600.2932, and MCR 3.411, however, not only determine title, but also do so in an action brought by any party, in or out of possession, with respect to the rights of any other party, in or out of possession. MCR 3.411(H) thus protects against the termination of interests of persons not made parties to the action, and not claiming an interest in the land through one of the named parties.

[13] In *Martin v Beldean,* 469 Mich 541, 542-543; 677 NW2d 312 (2004), issued during the pendency of this appeal, the Supreme Court held that "the exclusive means available when seeking to vacate, correct or revise a dedication in a recorded plat is a lawsuit filed pursuant to MCL 560.221 through MCL 560.229."

The trial court dismissed defendant Township on a pre-trial motion for summary disposition, having concluded that only the Road Commission, and not the Township, could have jurisdiction over a public road pursuant to the McNitt act (MCL 247.1 – 247.3, now repealed), and then only if the road had been legally accepted.

The McNitt act, 1931 PA 130, "required each board of county road commissioners to take over all township highways and incorporate them into one county-wide highway system over a five-year period." [*Kraus*, *supra* at 427.] The act was amended by 1939 PA 36, such that certification of roads required that the roads be in use for public travel for at least three months of each year, and the roads to be certified must have been taken over by the Board of County Road Commissioners between September 17, 1931 and July 1, 1939.

The trial court's conclusion that defendant Township could not have had jurisdiction over the platted streets under the McNitt Act was proper. However, the Township was properly named in this declaratory judgment since it granted Thomas building permits to build the house, and the disputed strip is in the Township. Also, the Township would be a necessary party in a suit to modify or vacate Park Street under the Land Division Act, MCL 560.224a.

We reverse and remand for a new trial. We vacate the order granting defendants Thomas title to the disputed strip by adverse possession. On this record, the trial court clearly erred in finding that defendants established adverse possession and that plaintiffs had not established acceptance of the disputed strip. Because the findings were made prior to defendants' presentation of proofs, we remand for a new trial. The court also erred in failing to adjudicate plaintiffs' private rights of access to Lake Huron.[14] We deny the municipal defendants' request that we assess sanctions against plaintiffs for filing a vexatious appeal.[15]

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Helene N. White

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[14] We note that any error in the court's refusal to admit plaintiffs' exhibit 12, a map contained within the 1903 "Plat Book of Iosco County Michigan," was harmless. This was a bench trial, and the court allowed plaintiffs' counsel to make an offer of proof regarding the 1903 map. Submitted in evidence at trial were the original plat, dated 1868, evidencing dedication of Park Street to the present water's edge. The map on record with the State of Michigan, dated 1911, also showed Park Street as extending to the water's edge. The 1940 certification map also showed Park Street extending to the water's edge.

[15] The issue of laches with respect to the Thomas house was not raised below.